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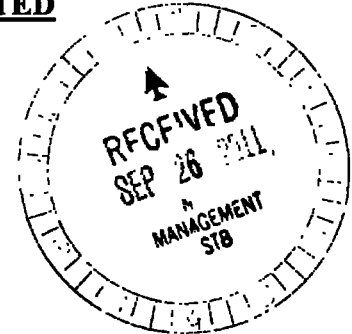
230994

EXPEDITED CONSIDERATION REQUESTED

September 26, 2011

BY HAND

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423



Re: STB Docket No. 42130, *Sunbelt Chlor Alkali Partnership v. Norfolk Southern Railway Company and Union Pacific Railroad Company*

Dear Ms. Brown:

Enclosed for filing in the above-referenced docket are an original and ten copies of Union Pacific's Motion for Partial Dismissal or, in the Alternative, Expedited Determination of Jurisdiction Over Challenged Rates.

Please indicate receipt and filing by date-stamping the enclosed extra copy and returning it to our messenger.

Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael L. Rosenthal".

Michael L. Rosenthal
Counsel for Union Pacific Railroad
Company

Enclosure

cc: Parties of Record

230994

EXPEDITED CONSIDERATION REQUESTED

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

SUNBELT CHLOR ALKALI PARTNERSHIP)

Complainant.)

v.)

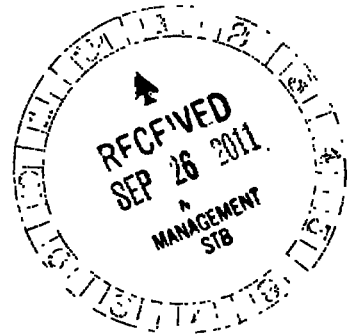
NORFOLK SOUTHERN RAILWAY COMPANY)

and)

UNION PACIFIC RAILROAD COMPANY)

Defendants.)

Docket No. 42130



**MOTION FOR PARTIAL DISMISSAL OR, IN THE ALTERNATIVE,
EXPEDITED DETERMINATION OF JURISDICTION
OVER CHALLENGED RATES**

J. MICHAEL HEMMER
LOUISE A. RINN
DANIELLE E. BODE
Union Pacific Railroad Company
1400 Douglas Street
Omaha, Nebraska 68179
(402) 544-3309

ENTERED
Office of Proceedings

SEP 26 2011

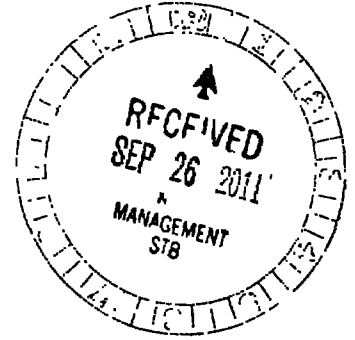
Part of
Public Record

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*Attorneys for Union Pacific
Railroad Company*

September 26, 2011

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



SUNBELT CHLOR ALKALI PARTNERSHIP)

Complainant,)

v.)

Docket No. 42130

NORFOLK SOUTHERN RAILWAY COMPANY)

and)

UNION PACIFIC RAILROAD COMPANY)

Defendants.)

**MOTION FOR PARTIAL DISMISSAL OR, IN THE ALTERNATIVE,
EXPEDITED DETERMINATION OF JURISDICTION
OVER CHALLENGED RATES**

Pursuant to 49 C.F.R. § 1111.5, defendant Union Pacific Railroad Company (“Union Pacific”) hereby moves to dismiss the portion of the complaint challenging Union Pacific’s common carrier rate for transportation of chlorine from New Orleans, Louisiana, to La Porte, Texas. on the ground that complainant SunBelt Chlor Alkali Partnership (“SunBelt”) cannot establish that Union Pacific has market dominance over the transportation to which the rate applies. Because market dominance is a jurisdictional prerequisite to regulation of a rail carrier’s rates, that portion of the complaint directed at Union Pacific’s rate between New Orleans and La Porte should be dismissed.

In the alternative, pursuant to 49 C.F.R. § 1117.1 and other applicable law and authority, Union Pacific respectfully requests that the Board bifurcate this proceeding to allow for an expedited determination of jurisdiction over Union Pacific’s common carrier rate for

transportation of chlorine from New Orleans to La Porte and any other market dominance defenses the defendants may present.

The basis for this motion can be readily summarized. The issue traffic moves from an origin in McIntosh, Alabama, served by Norfolk Southern Railway Company (“NS”), via New Orleans, to a destination in La Porte, Texas, served by Union Pacific. Since July 30, 2011, Union Pacific has transported the issue traffic from New Orleans to La Porte under a “local rate”—that is, a separately published rate for traffic moving over a carrier’s lines that may be combined with another carrier’s rate, without qualification, to construct a through rate. NS has transported the issue traffic under a rate that it separately established for transportation of chlorine from McIntosh to New Orleans. In these circumstances, Union Pacific’s rate is not subject to rate regulation unless SunBelt can show an absence of effective competition for the transportation from New Orleans to La Porte—“the transportation to which the [Union Pacific] rate applies.” 49 U.S.C. § 10707(b).

SunBelt cannot meet its burden because there is head-to-head rail competition for the transportation from New Orleans to La Porte. As shown below, BNSF Railway Company (“BNSF”) provides a competitive alternative to Union Pacific rail service from New Orleans to La Porte. In fact, BNSF has published a common carrier rate for chlorine moving from New Orleans to La Porte that is very similar to Union Pacific’s rate. Board precedent warrants dismissal under these facts.¹

¹ In this motion, Union Pacific is not challenging the Board’s jurisdiction over common carrier transportation that Union Pacific provided from March 31 through July 30, 2011, under a joint rate with NS. Nor is Union Pacific challenging here the Board’s jurisdiction over a small number of SunBelt’s chlorine movements that were billed under a Union Pacific proportional rate that was established on May 2, 2011, and expired on July 22, 2011. However, Union Pacific intends to pursue discovery on market dominance issues related to that period. If the Board bifurcates this case into separate market dominance and rate reasonableness phases, Union

Even if the Board does not grant Union Pacific's motion to dismiss now, it should bifurcate this case to address its jurisdiction over Union Pacific's local rate before the parties are required to submit their Stand Alone Cost ("SAC") evidence. Bifurcation is appropriate for three reasons: *First*, there is compelling evidence that the Board lacks jurisdiction over at least part of the complaint. *Second*, the SAC evidence for this case could differ significantly depending on the resolution of the jurisdictional issue. *Third*, Board resolution of the jurisdictional issue may promote settlement between SunBelt and Union Pacific by reducing the number of issues and the amount in dispute. In summary, prompt resolution of market dominance issues will further efficient management of this proceeding for the parties and the Board.

Union Pacific's motion is supported by the verified statement of Catie E. Kuester, Senior Business Director - Industrial Chemicals for Union Pacific ("Kuester V.S.").

FACTUAL BACKGROUND

On July 26, 2011, SunBelt filed a rate complaint against NS and Union Pacific, challenging the reasonableness of the common carrier rates charged for the transportation of the issue traffic from McIntosh, Alabama, to La Porte, Texas, since March 31, 2011. (Compl. ¶ 4.) NS transports the traffic from the origin in McIntosh to an interchange with Union Pacific in New Orleans. (*Id.* ¶ 5.) Union Pacific transports the traffic from the interchange with NS in New Orleans to the destination in La Porte. (*Id.* ¶ 6.)

Pacific respectfully suggests that the Board make clear that all market dominance issues will be resolved in the first phase.

From March 31 through July 29, 2011, the issue traffic moved under a joint rate established in an NS tariff, designated NSRQ 70319. (Kuester V.S. at 1-2 & Ex. A.) NSRQ 70319 expired on July 29. (*Id.* at 2.)²

Since July 30, the issue traffic has moved via NS from McIntosh to New Orleans under an NS tariff, and via Union Pacific from New Orleans to La Porte under a Union Pacific tariff, designated UPTF 4955, Item 1100. (*Id.* & Ex. B.)

Union Pacific's rate in UPTF 4955, Item 1100, is a local rate. The rate applies to chlorine moving from New Orleans to La Porte, which are points served by Union Pacific. (*Id.* at 2.) The rate applies without regard to whether traffic has a prior or subsequent move on another carrier through a specified interchange point. (*Id.*) No other carrier participated in setting the rate. (*Id.*) Union Pacific bills and collects the rate from SunBelt. (*Id.*) Union Pacific's rate is \$3,052 per car, plus a fuel surcharge. (*Id.*)

BNSF competes with Union Pacific to provide rail transportation from New Orleans to La Porte. (*Id.*) BNSF could receive the issue traffic from NS in New Orleans and transport it to the destination in La Porte over a route virtually identical to Union Pacific's:

- In New Orleans, BNSF and Union Pacific both interchange traffic with NS using track owned by the New Orleans Public Belt ("NOPB"). (*Id.*)³ NOPB reports that BNSF regularly interchanges traffic with NS via the NOPB.⁴

² A small number of movements during this period were billed under a proportional rate, designated UPTF 4955, Item 1000-B, that Union Pacific established on May 2, 2011, and that expired on July 22, 2011. (*Id.* at 2 n.1.)

³ See also Map of NOPB, <http://www.nopb.com/nopb/map/> (last visited Sept. 26, 2011).

⁴ Specifically, NOPB reports that it "originate[s] 19 trains per week for BNSF Railway out of our main switching yard Cotton Warehouse Yard. The cars for these trains are primarily received in interchange from the Canadian National Railway, CSXT Transportation, Inc., and Norfolk Southern Railway." See NOPB: About Us, <http://www.nopb.com/nopb/about-us/transportation-department.html> (last visited Sept. 26, 2011).

- From New Orleans to La Porte, which is on the outskirts of Houston, BNSF and Union Pacific have essentially identical routes. (Kuester V.S. at 2-3.) The railroads operate over the same tracks between New Orleans and Houston. (*Id.* at 3.)
- At the destination, BNSF and Union Pacific both interchange traffic with the Port Terminal Railroad Association (“PTRA”), which performs terminal switching services. (*Id.*) PTRA actually delivers the issue traffic to the destination at La Porte. (Compl. ¶ 6.)

BNSF’s ability to transport chlorine from New Orleans to La Porte is confirmed by BNSF’s publication of a rate that applies to chlorine moving from New Orleans to La Porte. (Kuester V.S. at 3 & Ex. C.) BNSF’s rate is \$3,071 per car, plus a fuel surcharge. (*Id.* at 3.) BNSF’s base rate is within \$19 of Union Pacific’s rate. (*Id.*)

ARGUMENT

I. THE BOARD LACKS JURISDICTION TO REGULATE UNION PACIFIC’S LOCAL RATE IN UPTF 4955, ITEM 1100, FOR TRANSPORTATION OF CHLORINE BETWEEN NEW ORLEANS AND LA PORTE.

The Board has jurisdiction to determine the reasonableness of a rail rate only if the defendant carrier has market dominance—that is, only if there is “an absence of effective competition from other rail carriers or modes of transportation for the transportation to which a rate applies.” 49 U.S.C. § 10707(a); *see also id.* § 10701(d)(1). Congress placed that limit on the Board’s authority in accordance with the “overall congressional intent that ‘competition be recognized as the best control on the ability of railroads to raise rates.’” *Potomac Elec. Power Co. v. Consol. Rail Corp.*, 367 I.C.C. 532, 536 (1983) (quoting H. Rep. 96-1430, at 89 (1980)). To assess the statutory limitation on its jurisdiction, the Board considers “whether there are any feasible transportation alternatives that could be used for the issue traffic.” *Total Petrochemicals USA, Inc. v. CSX Transp., Inc.*, No. 42121, slip op. 4 (STB served Apr. 5, 2011) (hereinafter “*Total Petrochemicals*”); *see also E.I. du Pont de Nemours & Co. v. CSX Transp., Inc.*, No. 42100, slip op. 2 (STB served June 30, 2008) (hereinafter “*E.I. du Pont*”). SunBelt bears the

burden of establishing market dominance. *See E.I. du Pont* at 2; *Market Dominance Determinations and Consideration of Product Competition*. 365 I.C.C. 118, 119 (1981).

If SunBelt wants to challenge Union Pacific's rate in UPTF 4955, Item 1100, SunBelt must show an absence of effective competition for transportation from New Orleans to La Porte because that is "the transportation to which the rate applies." 49 U.S.C. § 10707(b). UPTF 4955, Item 1100, is a local rate. It applies to the transportation of chlorine from New Orleans to La Porte. It is not restricted to SunBelt's traffic or traffic interchanged with NS. and it applies to traffic regardless of any prior or subsequent movement on any other carrier. Union Pacific separately bills and collects its freight charges under its rate for the transportation that it provides. The fact that Union Pacific allows its rate to be used in combination with another carrier's rate to construct a through rate for the issue traffic does not change the application of the statutory market dominance requirement to Union Pacific's rate.

The Board's precedents confirm that SunBelt may not challenge Union Pacific's rate in UPTF 4955, Item 1100, unless SunBelt proves an absence of effective competition for the transportation that Union Pacific provides from New Orleans to La Porte. Local rates used as components of combination rates are "assessed individually in a rate reasonableness case." *Cost Ratio for Recyclables -- 1993 Determination*, Ex Parte No. 394 (Sub-No. 11), slip op. at 2 (ICC served Dec. 16, 1993). A rail carrier "'may establish any rate for transportation or other service' that it provides, and, pursuant to that initiative, may choose to establish local, joint, or proportional rates." *Central Power & Light Co. v. S. Pac. Transp. Co.* ("CP&L I"), 1 S.T.B. 1059, 1064 (1996) (quoting 49 U.S.C. § 10701(c)).⁵ Thus, when a shipper requests rail service

⁵ Local rate are rates offered "'by a single rail carrier that is applicable only over its line and for which the transportation (exclusive of terminal services by switching, drayage or other terminal carriers or agencies) can be provided by that carrier.'" *Soc'y of the Plastics Indus., Inc.*

that requires multi-carrier transportation, the carriers have the prerogative to determine the type of rate to offer on the through traffic. *See CP&L I*, 1 S.T.B. at 1064 & n.9. If they establish joint or proportional rates, the shipper cannot obtain a reasonableness determination and a rate prescription that is confined to one carrier's segment alone, "but instead must challenge the reasonableness of the entire origin-to-destination movement." *Id.* at 1062. However, if a carrier establishes a local rate and allows it to be used as a factor in a combination rate for the through traffic, the shipper must address its market dominance and rate reasonableness evidence to the transportation to which the local rate applies. *See, e.g., Metro. Edison Co. v. Conrail*, 5 I.C.C.2d 385, 406 n.27 ("If the combination rates there were separately published factors (as opposed to proportional rates), neither *Great Northern* nor *L&N* would have precluded relief" in a challenge to the reasonableness of one factor of a combination rate); *Chevron Chem. (Canada) Ltd. v. Mo. Pac. R.R.*, Docket No. 40190, slip op. at 2 (ICC served Mar. 7, 1988) (dismissing a complaint involving a challenge to a combination of local rates because the plaintiff did not establish Missouri Pacific's market dominance for its portion of the route); *cf. Louisville & Nashville R.R. v. Sloss-Sheffield Steel & Iron Co.*, 269 U.S. 217, 231-32 (1925) (rejecting the contention that

v. Consol. Rail Corp., No. 40298, slip op. at 4-5 (ICC served Oct. 22, 1990) (quoting 49 U.S.C. § 10706(a)(1)(B)).

Joint rates "are 'single-factor' rates between origin and destination on more than one railroad. The shipper pays one overall rate, and does not know, in the normal course, how that rate is divided among the carriers." *Metro. Edison Co.*, 5 I.C.C.2d at 402.

Combination rates are constructed "from two or more rates (each a 'factor' of the total charge)." *Id.* The factors can be local rates, joint rates, or proportional rates. Proportional rates differ from local rates in that "proportional rates may only be added together to form a through rate under specified conditions. That is, proportional rates . . . may only be used for shipments originating beyond a certain point or destined beyond a certain point." *Id.*; *see also CP&L I*, 1 S.T.B. at 1060 n.3.

joint through rates should be treated for regulatory purposes as if they were a combination of local rates).

SunBelt cannot meet its burden of establishing market dominance with regard to Union Pacific's transportation of chlorine from New Orleans to La Porte under the rate in place since July 30, 2011, because BNSF competes with Union Pacific to provide service from New Orleans to La Porte. The Board has recognized that "the fact that [a carrier] serves as one leg of a transportation movement and does not exclusively serve either the origin or destination . . . casts considerable doubt on market dominance." *Total Petrochemicals* at 6. Here, there is much more than "considerable doubt." This is not a case in which use of intermodal service and rail-truck transloading facilities creates questions of fact that should not be resolved in a motion to dismiss. *Cf. id.*; *Sierra Pac. Power Co. v. Union Pac. R.R.*, No. 42012, slip op. 3 (STB served Jan. 26, 1998) (hereinafter "*Sierra Pacific*"). Here, there is head-to-head rail competition for the leg of the movement served by Union Pacific. Alternative rail transportation by other rail carriers unquestionably constitutes effective competition. *See Market Dominance Determinations and Consideration of Product Competition*, 365 I.C.C. at 132; *Metro. Edison Co.*, 5 I.C.C.2d at 411. In light of such direct competition, the market, not the Board, should determine the appropriate rate, and the Board should dismiss all claims against Union Pacific involving UPTF 4955, Item 1100.⁶

⁶ Union Pacific's absence from the portion of this case involving UPTF 4955, Item 1100, will not prejudice SunBelt in its claim against NS for the period since July 30, 2011. *See Metro. Edison Co.*, 5 I.C.C.2d at 409; *see also Ford Motor Co. v. ICC*, 714 F.2d 1157, 1169-70 (D.C. Cir. 1983). If discovery of Union Pacific proves necessary, Union Pacific would participate voluntarily to the extent SunBelt or NS makes reasonable requests for information from Union Pacific.

II. IN THE ALTERNATIVE, THE BOARD SHOULD EXPEDITE DETERMINATION OF ITS MARKET DOMINANCE JURISDICTION

Should the Board determine that dismissal is inappropriate at this stage, it should instead expedite determination of its market dominance jurisdiction. It is appropriate to bifurcate the market dominance and rate reasonableness phases of a proceeding when a railroad defendant provides “evidence raising considerable doubts as to the shipper’s ability to satisfy the Board’s market dominance standard,” *Total Petrochemicals* at 4, and bifurcation will “minimize the administrative burdens on the parties,” *Sierra Pacific* at 3.

Bifurcation would be appropriate in this case. BNSF’s ability to transport chlorine from New Orleans to La Porte plainly raises considerable doubts as to SunBelt’s ability to satisfy the Board’s market dominance standard for the transportation Union Pacific provides under UPTF 4955, Item 1100.

In addition, the SAC evidence that will be required for this case depends on the resolution of the jurisdictional issue. because Union Pacific’s rate from New Orleans to La Porte may not be at issue for the period after July 30, 2011.⁷ Unless the Board addresses market dominance issues now, parties might be forced to engage in discovery that may prove to be irrelevant and prepare multiple versions of their SAC evidence to address different potential resolutions of those issues.

Finally, Board resolution of the jurisdictional issue at the outset of this case may promote settlement between SunBelt and Union Pacific by reducing the number of issues and the amount in dispute. SunBelt might even elect to proceed under a simplified approach to address

⁷ It is possible that a lack of market dominance could be found for the entire rate case, making bifurcation even more appropriate. Both the origin at McIntosh and the destination at La Porte are near waterways with substantial barge traffic. The Board recently dismissed a portion of a complaint involving transportation of chlorine in light of evidence regarding competition from barge movements. *See E.I. du Pont* at 6.

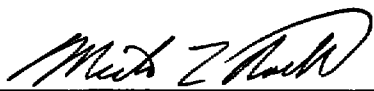
the four-month period before July 30 when Union Pacific and NS transported the issue traffic under joint common carrier rates.

III. CONCLUSION

For the reasons set forth above, Union Pacific respectfully requests that the Board find that effective competition exists for the transportation that Union Pacific has provided since July 30, 2011, under UPTF 4955, Item 1100, and therefore, that the Board lacks jurisdiction to determine the reasonableness of that rate. In the alternative, Union Pacific requests that the Board bifurcate the market dominance and rate reasonableness phases of this proceeding and postpone the submission and consideration of rate reasonableness evidence, as well as any discovery related to such evidence, until it has resolved the issue of market dominance.

Respectfully submitted,

J. MICHAEL HEMMER
LOUISE A. RINN
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Union Pacific Railroad Company
1400 Douglas Street
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(202) 662-6000

*Attorneys for Union Pacific
Railroad Company*

September 26, 2011

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that on this 26th day of September, 2011, I caused a copy of the foregoing Motion for Partial Dismissal or, in the Alternative, Expedited Determination of Jurisdiction over Challenged Rates to be served by e-mail and by first-class mail, postage prepaid, on:

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Michael L. Rosenthal

SUNBELT CHLOR ALKALI PARTNERSHIP
Complainant,

v.

Docket No. 42130

NORFOLK SOUTHERN RAILWAY COMPANY

and

UNION PACIFIC RAILROAD COMPANY

Defendants.

My name is Catie Kuester, and I am Senior Business Director - Industrial Chemicals for Union Pacific Railway Company (“Union Pacific”), a position I have held for one year. In this capacity, my responsibilities include performing market research and providing analysis used to establish Union Pacific’s rates for industrial chemical, including chlorine. I am submitting this statement in support of Defendant Union Pacific’s Motion for Partial Dismissal or, in the Alternative, Expedited Determination of Jurisdiction Over Challenged Rates. This statement sets forth certain information regarding SunBelt’s shipment of chlorine from McIntosh, Alabama, to La Porte, Texas. Of particular importance, this statement describes Union Pacific’s transportation of the Sunbelt’s chlorine from New Orleans, Louisiana, to La Porte, Texas.

From March 31 through July 29, 2011, the complaint traffic moved under a joint rate established in a tariff by Norfolk Southern Railway Company ("NS"), designated NSRQ

70319. (Exhibit A.)¹ NSRQ 70319 expired on July 29. Since July 30, SunBelt's chlorine has moved via NS from McIntosh to New Orleans and via Union Pacific from New Orleans to La Porte under a Union Pacific tariff, designated UPTF 4955, Item 1100. (Exhibit B.)

Union Pacific's rate in UPTF 4955, Item 1100, is a local rate. The rate applies to chlorine moving from New Orleans to La Porte, which are points served by Union Pacific. The rate applies without regard to whether traffic has a prior or subsequent movement on another carrier through a specified interchange point. No other carrier participated in setting the rate. Union Pacific bills and collects the rate. Union Pacific's rate is \$3,052 per car, plus a fuel surcharge.

Burlington Northern Santa Fe Railway ("BNSF") competes with Union Pacific to provide rail transportation from New Orleans to La Porte. I am not aware of any reason why BNSF could not provide competitive service for chlorine moving from an interchange with NS in New Orleans to the destination in La Porte. In fact, BNSF could receive the issue traffic from NS in New Orleans and transport it to the destination in La Porte over essentially the same route as Union Pacific.

In New Orleans, BNSF and Union Pacific both interchange traffic with NS using track owned by the New Orleans Public Belt ("NOPB").² NOPB reports that BNSF regularly interchanges traffic with NS via the NOPB.³ From New Orleans to La Porte, which is on the

¹ On May 2, 2011, Union Pacific established a proportional rate, designated UPTF 4955, Item 1000-B, which applied to chlorine originated by NS at McIntosh and interchanged at New Orleans, but only a few movements were rated under that Item. This rate expired on July 22, 2011.

² See also Map of NOPB, <http://www.nopb.com/nopb/map/> (last visited Sept. 26, 2011).

³ NOPB reports that it "originate[s] 19 trains per week for BNSF Railway out of our main switching yard Cotton Warehouse Yard. The cars for these trains are primarily received in interchange from the Canadian National Railway, CSXT Transportation, Inc., and Norfolk

outskirts of Houston, BNSF and Union Pacific have essentially identical routes. The railroads operate over the same tracks between New Orleans and Houston. At the destination, BNSF and Union Pacific both interchange traffic with the Port Terminal Railroad Association ("PTRA"). PTRA actually delivers the issue traffic to the destination at La Porte.

BNSF's ability to transport chlorine from New Orleans to La Porte is confirmed by BNSF's publication of a rate that applies to chlorine moving from New Orleans to La Porte. (Exhibit C.) BNSF's rate is \$3,071 per car, plus a fuel surcharge. BNSF's base rate is within \$19 of Union Pacific's rate.

Southern Railway." See NOPB: About Us, <http://www.nopb.com/nopb/about-us/transportation-department.html> (last visited Sept. 26, 2011).

VERIFICATION

I, Catie E. Kuester, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 26th day of September, 2011.


Catie E. Kuester

EXHIBIT A

SUBJECT TO FUTURE INCREASES ADOPTED BY RAILROADS

**
** NORFOLK SOUTHERN **
**
** RATE AUTHORITY TRANSMITTAL **
**
** RATE AUTHORITY : NSRQ 70319 **
** SECTION : 001-D-00 **
**
** FILE NUMBER : CHLORINE **
** THIS COPY WAS SENT ON : 04/08/2011 @ 15:17 PM **
**

EFFECTIVE : 04/09/2011

EXPIRES : 05/01/2011

**

DIVISIONS ARE INCLUDED IN THIS AUTHORITY
PRODUCT MANAGER: K S FIZER 540-985-6064

**

THE FOLLOWING CONDITIONS APPLY TO THE ENTIRE AUTHORITY:
SUBJECT TO THE RULES AND PROVISIONS
PUBLISHED IN NORFOLK SOUTHERN RAILWAY CONDITIONS OF
CARRIAGE #1-SERIES OR SUCCESSOR PUBLICATION.

NORFOLK SOUTHERN NSRQ 70319 1 D00 SENT 04/08/2011 15:17 PM PAGE 2
ITEM: 101000.00 ORIGIN ROAD: NS DESTINATION ROAD: UP
STCC: 2812815.00 CHLORINE GAS, LIQUEFIED

FROM: AL MCINTOSH

TO: PRICE PER MIN WT EQUIP NOTE REFERENCES

TX LA PORTE 11763.00 CAR T 01
ROUTE: NS NEWOR UP

NOTE REFERENCES/NUMBERS: (SEE LAST PAGES FOR COMPLETE NOTE TEXT)

01 0076 RATES APPLY ONLY IN TANK CARS

1249 NO MILEAGE ALLOWANCE TO BE PAID

G556 PRICES IN THIS AUTHORITY ARE NOT SUBJECT TO FUEL SURCHARGE.

Q543 RATE DOES NOT INCLUDE ANY COST OR NEED FOR PTC

**

COMPLETE NOTE TEXT (IN NUMERICAL ORDER):
G556

PRICES IN THIS RATE AUTHORITY ARE NOT SUBJECT TO A
FUEL SURCHARGE.

Q543 RATE DOES NOT INCLUDE ANY COST OR
NEED FOR POSITIVE TRAIN CONTROL (PTC) TO SERVE THIS TRAFFIC.

0076 APPLIES ONLY IN TANK CARS.

1249 NO MILEAGE ALLOWANCES PAID TO CONSIGN-
OR, CONSIGNEE OR OWNER OF CAR.

THIS AUTHORITY HAS BEEN SENT TO THE FOLLOWING ADDRESSES:
KSFIZER@NSCORP.COM

EXHIBIT B



UPTF 4955

applying on

TIH COMMODITIES

Governed, except as otherwise provided, by UFC 6000-series:
UP 6004-series and UP 6007-series

Issued By:
G. A. NAVALKAR - MANAGER PRICING SERVICES

Union Pacific Railroad Company
1400 Douglas Street Omaha, NE 68179

Issued April 7, 2011
Effective: May 1, 2011
Expiration April 30, 2012

UPTF 4955



UPTF 4955

Item: 1
DEFINITION OF ITEM SYMBOLS

DEFINITION OF ITEM SYMBOLS

A - Add
C - Change
D - Decrease
I - Increase
X - Expire

Issued April 7, 2011
Effective May 1, 2011
Expiration April 30, 2012

UPTF 4955

Page: 1 of 1
Item: 1
Concluded on this page



UPTF 4955

Item: 6
REFERENCE TO TARIFFS, CIRCULARS, ITEM
NOTES, RULES

REFERENCE TO TARIFFS, CIRCULARS, ITEMS NOTES, RULES, ETC.

Where reference is made in this publication to tariffs, circulars, items, notes, rules, etc., such references are continuous and include revisions and supplements to and successive issues of such tariffs, circulars, items, notes, rules, etc.

Issued April 7, 2011
Effective May 1, 2011
Expiration April 30, 2012

UPTF 4955

Page 1 of 1
Item 6
Concluded on this page



UPTF 4955

Item: 11
REVISIONS/CANCELLATIONS

REVISIONS/CANCELLATIONS

Unless otherwise provided, as this Pricing Document (or items contained herein) is revised, current letter suffixes cancel prior suffixes. Letter suffixes will be used in alphabetical sequence starting with A. Example: Pricing Document 3000-A cancels 3000, 3000-B cancels 3000-A; item 100-A cancels Item 100, Item 100-B cancels Item 100-A.

Issued April 7, 2011
Effective May 1, 2011
Expiration April 30, 2012

UPTF 4955

Page 1 of 1
Item 11
Concluded on this page



UPTF 4955

Item: 12
UP TARIFF 6607

UP TARIFF 6607

This publication is governed, except as otherwise provided herein, by the provisions of UP TARIFF 6607 as amended from time to time.

Issued April 7, 2011
Effective: May 1, 2011
Expiration April 30, 2012

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Item: 15
GOVERNING RULES DOCUMENTS

GOVERNING RULES DOCUMENTS

This publication is governed, except as otherwise specifically provided herein, by the provisions of publications below as amended from time to time:

Bureau of Explosives	BOE 6000-series
Directory of Hazardous Materials Shipping Description	(Issued by RAILINC)
Official Railroad Station List	OPSL 6000-series
Official Railway Equipment Register	RER-series
Standard Transportation Commodity Code	STCC 6001-series
Uniform Freight Classification	UFC 6000-series
Union Pacific Railroad Company Accessorial Tariff	UP 6004-series
Rules for Regulated Traffic	UP 6007-series
Mileage Allowance on Cars of Private Ownership	RIC 6007-series

Issued. April 7, 2011
Effective. May 1, 2011
Expiration. April 30, 2012

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Item: 1100
CHLORINE - NEW ORLEANS, LA, TO LA PORTE, TX

CHANGE KEY: A-Add; C-Change; D-Decrease; I-Increase; and X-Expire

For billing purposes use the following rate authority: UPTF 4955-1100

STCC/GROUP	STCC	DESCRIPTION
2812815		Chlorine Gas, Liquefied

GENERAL APPLICATION RULES FOR ITEM 1100

1. Price applies in United States funds.
2. Applies in AAR Car Type T, tank cars.
3. Mileage allowance payment on private equipment will not apply.
4. Price is subject to Tariff UP 6007 (series), item 695 (series).
5. Applies in Customer/Shipper-owned or -leased equipment bearing private (non-railcarrier) reporting marks.

APPLICATION AND RATES

COLUMN	RATE APPLICATION RULES		
1.	Rates are in U.S. dollars Per Car.		
		Col 1 Rate	Route Code/Group
STCC: 2812815 Chlorine Gas, Liquefied			
From: LA, NEW ORLEANS			
To: TX, LA PORTE		3052.00	UP

Issued: July 22, 2011
Effective: July 23, 2011
Expiration: April 30, 2012

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Union Pacific Railroad

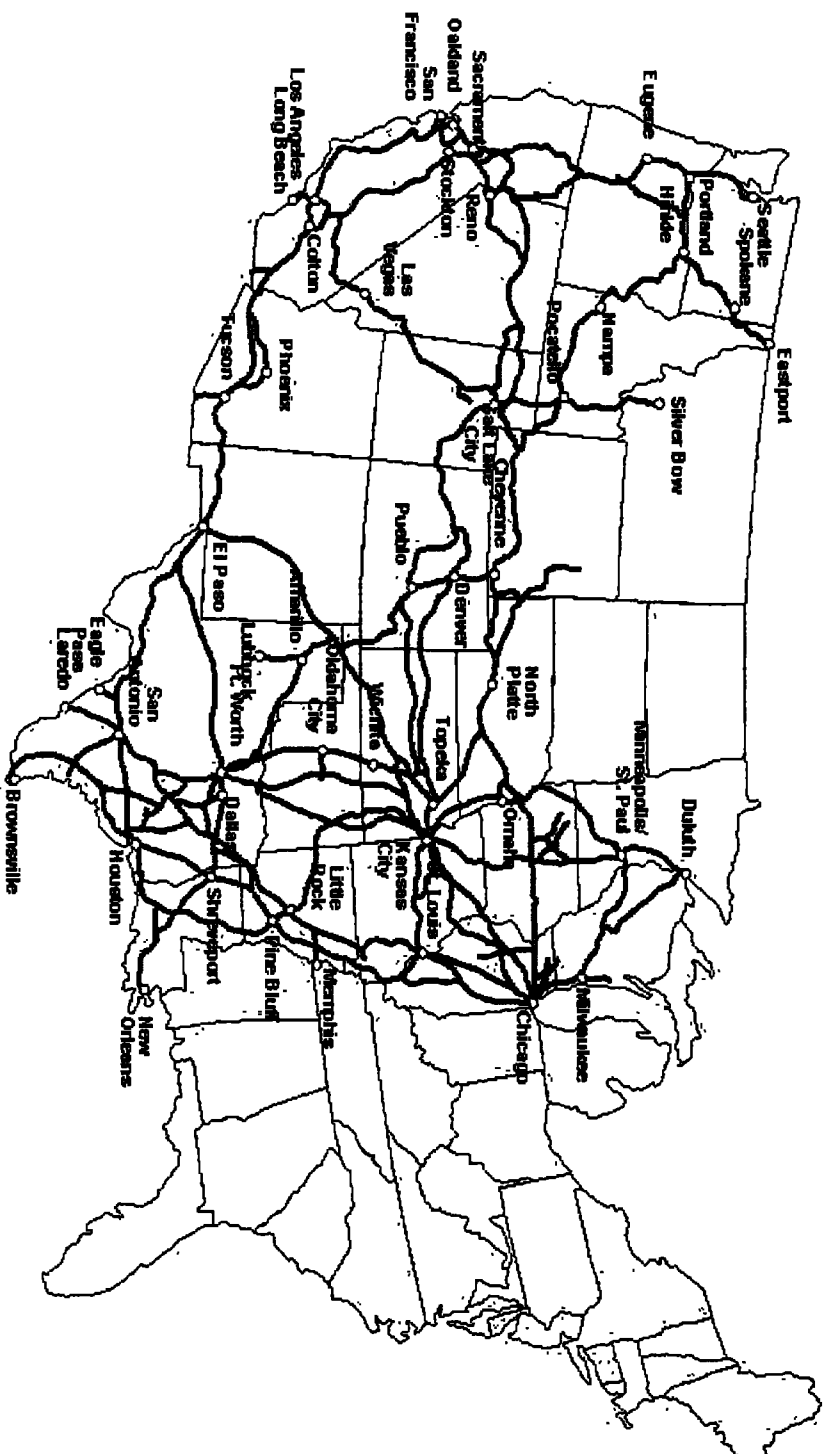


EXHIBIT C



BNSF Railprices - Point and Click



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[Carload Service Schedules](#)



[Automotive Service Schedules](#)



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Price Conditions



2812815



NEW
ORLEANS, LA



LA PORTE, TX



Commodity: 2812815
Origin: NEW ORLEANS, LA
Destination: LA PORTE, TX
Amount: \$3071.00 PER CAR
Authority: BNSF 90096 ITEM: 5000
Route: BNSF
Effective Date: 03/16/2011
Expiration Date: 12/31/2011
Equipment: Price applies in Shipper Owned or Leased Tank Cars.
Mileage payments will not apply.

Price Conditions:



Price applies in United States funds.
No mileage allowance will be paid. Customer warrants that its interest in the equipment used under rates in this price list is sufficient to permit it to waive full payment of mileage allowances, customer and railroad agree that railroad will not be liable for mileage allowances in excess of the above obligation. In the event that a party other than customer submits a claim to railroad for mileage allowance payments in excess of railroad's obligation under this price list, customer shall at railroad's option either (1) release, defend and indemnify railroad from said claim including attorney's fees and cost of litigation or (2) reimburse railroad for excess mileage allowances paid by railroad within (30) days of notice by railroad.
Origin and Destination groups used in this Price Authority are defined in BNSF Geography Group Book, BNSF-5. This Book is located on the BNSF website at bnsf.com.
BILLING Each shipment made under this price list shall be evidenced by a standard uniform straight bill of lading, order notify bill of lading (bill of lading) or shipping order. At the time shipment is tendered the original and all copies of the bill of lading or shipping order or other shipping orders shall contain reference to Price List BNSF 90096.
PAYMENT PLAN Payment of all charges shall be made according to Surface Transportation Board or Canadian Credit Regulations and subsequent amendments. If payments are not made within the prescribed credit period, or if customer does not have credit with BNSF, payment may be required in advance of service. Rates and charges in this price list are payable to railroad in United States funds
LOSS AND DAMAGE Standard common carrier liability pursuant to 49 U.S.C 11706 will apply on shipments made under this price list. Accordingly, railroad

shall not be liable for any loss, damage or injury caused by an act of God, the public enemy, act of the customer, a public authority, or inherent vice or nature of the goods. Railroad shall not be liable for any loss, damage or injury due to improper loading. Pursuant to 49 U.S.C. 11706, all claims against railroad must be brought within nine (9) months and all civil actions against railroad must be brought within two (2) years.

EQUIPMENT HANDLING HAZARDOUS MATERIAL.

Equipment used under this price list shall be privately owned or leased cars as described in Tariff and ICC RER 6411-Series and tendered to railroad in accordance with all applicable hazardous material regulations of the United States Department of Transportation (DOT), as published in 49 CFR. This price list does not commit railroad to accept privately owned or leased equipment that does not have OT-5 approval from railroad. Customer shall indemnify and hold harmless railroad for loss, damage or injury due to any defects in privately owned or leased equipment, improper loading practices, or failure to properly close, secure and tender loaded or empty equipment, as prescribed by DOT regulations. Customer shall indemnify and hold harmless railroad for loss, damage or injury due to presence of any trace chemicals or contaminants in the commodity which are not described in the commodity's proper shipping name, as provided in Column of Section 172.01 of United States Department of Transportation. Customer warrants that its interest in the equipment used under the price list is sufficient to permit it to waive full payment of mileage allowances. Customer and railroad agree that railroad will not be liable for mileage allowances. In the event that a party other than customer submits a claim to railroad for mileage allowance under this price list, customer shall, at railroad's option either (1) release, defend and indemnify railroad from said claim including attorney's fees and cost of litigation, or (2) reimburse railroad for excess mileage allowances paid by railroad within thirty (30) days of notice by railroad.

FORCE MAJEURE In the event any party cannot perform under this price list due to or as a result of the following causes: Acts of God, including, but not limited to flood, storm, earthquake, hurricane, tornado, or other severe weather or climatic conditions; acts of public enemy, war, blockade, insurrection, derailment, vandalism, sabotage, fire, accident, wreck, washout or explosion; labor strike or interference, lockout or labor dispute, shortage of diesel fuel, embargo or AAR service order or governmental law, orders or regulation, or breakage of machinery; and/or any like causes beyond the reasonable control of customer or railroad, the parties' obligations under this tariff shall be suspended to the extent made necessary by the Force Majeure event at the affected origin(s) and/or destination(s) during any such disability period insofar as it applies to the affected location(s). Suspension shall not result in

extension of the term of this price list. The party claiming the Force Majeure shall take all reasonable steps to remove the Force Majeure event, and shall promptly notify the other party(ies) within a period of five (5) days, excluding weekends and holidays when it learns of the existence of a Force Majeure condition and will similarly notify the other party(ies) within a period of five (5) days, excluding weekends and holidays, when the Force Majeure is terminated.

GOVERNING PROVISIONS Except as otherwise provided for in this price list, shipments moving under this price list will be governed by the tariffs, exempt circulars, rate memorandums, rules and regulations which would apply if this price list were not in effect, except that origin and destination intermediate application rules will not apply. If, for any reason, any rule, regulation, or provision of any tariff, exempt circular or rate memorandum referenced under this price list is canceled or becomes inapplicable, the last published provision that would have been applied will govern. In the event of conflict between the above referenced rules, regulations, etc. which are herein incorporated by general reference, and this price list, this price list shall govern. Railroad's obligation to provide service under this price list shall be no greater than it would be as a common carrier. Services or other matters not specifically addressed in this price list.. including but not limited to, loss and limitations, shall continue to be governed by rules, regulations, tariffs, and statutory provisions, as amended from time to time, which would apply if it were not for this price list, and which are incorporated herein by reference. This price list shall not relieve railroad of its common carrier obligations as set forth in the uniform straight bill of lading terms and conditions. Said terms and conditions shall govern all shipments made hereunder and are incorporated herein by reference and made a part hereof as if fully herein set forth; provided, however, that in the event of any inconsistency between said terms and conditions and any other provisions of this price list, the provisions of this price list shall govern. Transit of any kind, inspection, or stopping-in-transit for completion of loading or partial unloading, does not apply. Diversion and reconsignment privileges do not apply in connection with shipments moving under the provisions of this tariff. Provisions of the applicable demurrage book will govern.

INDEMNIFICATION Upon delivery to and acceptance by customer of the commodity transported under this price list ("Commodity"), railroad and railroad's affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees, and agents (collectively "Indemnites") shall be relieved from any further obligation with regard to the disposition of the Commodity. Customer hereby agrees to release, defend, indemnify, and hold railroad harmless for,

from and against any and all losses, damages (including special, incidental, and consequential damages), suits, liabilities, fines, penalties, costs, causes of action, demands, judgments and expenses (including without limitation, court costs, attorneys' fees, and costs of investigation, removal and remediation and government oversight costs) environmental or otherwise (collectively "Liabilities") of any nature, kind or description of any person or entity directly or indirectly arising out of, resulting from or related to (in whole or in part) the disposition of the Commodity, or the work performed by customer or a licensed EPA cleanup-disposal operator designated by customer under this price list, including but not limited to, damages caused by sudden pollution. Customer shall, at the sole option of railroad, defend the Indemnitees at customer's sole expense in any claim involving the same. The foregoing indemnification and hold harmless provision shall not apply to any Liabilities wholly caused by the sole negligence of any Indemnitee.

Each railroad party to this price list represents and warrants that it is and will maintain the ability to be financially responsible for general liability (including contractual liability) insurance of not less than ten million dollars combined single incident limit for bodily injury and property damage. Customer agrees to keep in force general liability (including contractual liability) insurance of not less than ten million dollars combined single incident limit for bodily injury and property damage. Certification of insurance will be furnished by customer to railroad(s) party to this tariff.

JOINT LIABILITY Each party shall indemnify ("Indemnifying Party") and hold harmless the other party for all judgments, awards, claims, demands, and expenses, including without limitation, attorneys' fees, environmental damage, hazardous materials damage, fines or penalties, for injury or death to all persons, including Railroad's and Customer's officers and employees, and for loss and damage to property belonging to any person whomsoever ("Loss or Damage"), arising during the transportation of the commodity under this tariff, but only to the extent the Indemnifying Party's negligence causes or contributes to any such Loss or Damage. In the event the proximate cause of such Loss or Damage cannot be determined, any liability for such Loss or Damage shall be shared equally between Railroad and Customer.

LINE ABANDONMENT The terms of this price list in no way obligates the railroad to continue ownership, maintenance (including weight standards) or operations of any rail lines. Railroad will not be liable for any increased transportation costs or consequential damages that may result from such discontinuation. **INSPECTION AND CLEANING OF EQUIPMENT** If equipment owned or leased by railroad is used by customer or its designated agent to transport commodity named under this price list,

customer shall assume and be responsible for cleaning and decontaminating the equipment to the satisfaction of railroad, before said equipment is returned to railroad. Customer shall assume and be responsible for visually inspecting and removing any residual waste from the equipment and insuring that sludge, or other residue contaminants resulting from the cleaning of the rail cars shall be properly disposed of in full accordance with applicable requirements of federal, state and local laws and regulations. If customer fails to decontaminate railroad furnished equipment used to transport commodity named under this price list to the reasonable satisfaction of railroad, railroad will have the right to have said equipment cleaned and all charges for cleaning will be billed directly to customer.

LOADING AND UNLOADING. Customer shall have the sole responsibility, at its sole expense, for properly packaging, labeling, marking, blocking, bracing, placarding, loading and unloading the commodity into or out of equipment to be transported pursuant to this Agreement. Customer shall comply with the loading with the loading rules of the Association of American Railroads and applicable federal, state and local loading rules or other loading rules as modified to meet the needs of customer subject to approval or railroad's Risk Management Division as well as applicable federal, state and local requirements regarding the handling of the commodity. Customer shall further be responsible for insuring that the load limits of any equipment used for transporting the commodity under this price list are not exceeded. In the event it is discovered that equipment has been overloaded, railroad may set out such equipment at a location convenient to railroad and shall notify customer by telephone, confirmed in writing, of the location of the overloaded equipment.

Railroad may then either (1) contact customer in which event customer shall have twenty-four (24) hours to remove excess weight; or (2) move the overloaded equipment to a location suitable for removal of the excess weight that meets with all federal, state and local requirements. In any event, customer shall be responsible for performing and bearing all costs for movement of the overloaded railcar and removal of excess weight.

Railroad will move the affected equipment to destination in such manner and time as is practicable after railroad receives notice from customer that excess weight has been removed. Customer will be responsible to advise receiver when customer is not the receiver for inspecting all railroad equipment after unloading the commodity therefrom.

Customer shall be responsible to advise receiver when customer is not the receiver for cleaning and decontaminating railroad equipment before its return to the railroad, as well as any adjacent or vicinity property at the origin loading location, destination unloading location

and/or any location enroute where such waste has been loaded and/or unloaded in accordance with applicable requirements of federal, state and local laws and regulations including, without limitation, DOT regulations of 49 CFR 174.57. Customer or receiver shall have the right to arrange for such responsibilities to be carried out by third parties; PROVIDED, HOWEVER, that customer shall remain obligated to railroad under its promises in this price list in such cases. Notwithstanding, the provisions of the following INDEMNIFICATION paragraph, customer shall indemnify and hold harmless railroad or the actual owners of equipment used under this price list from and against any and all liability for loss damage (including but not limited to loss or damage to fees arising therefrom, or special and consequential damages) resulting from future use of equipment to the extent such loss, damage, personal, injury or death resulted from customer's failure or negligence in inspecting and/or decontaminating equipment prior to release to railroad NOTICE Any notice given under this price list shall be effective when received. Notices, except as otherwise provided herein, shall be delivered to the party(ies) entitled to receive the same by personal delivery, by Registered or Certified Mail, Return Receipt Requested, or by an electronic means which can produce a written copy provided that acknowledgment of receipt of the electronic communication is obtained. Notices shall be addressed to the appropriate party(ies) as shown below. Any notices pertaining to a Force Majeure or to matters of an emergency or operating nature may be given by a reasonable means. Any notice given verbally shall be confirmed in writing by First Class Mail as soon as practicable, if requested by party(ies) receiving such notice. Name of Company THE BURLINGTON NORTHERN AND SANTA RAILWAYCOMPANY Attn: Name & Title Attn: Waste Marketing, Third Floor Address P.O. Box 961065 City, State and Zip Code Ft. Worth, TX 76161-0065 Price is subject to a Fuel Surcharge. A Mileage Based Fuel Surcharge will be applied to the rates or charges in this price authority for the shipment, as provided for in Item 3376-Series, Section B (\$2.50 Strike Price), of BNSF Rules Book 6100-Series. This amount will be added to the freight bill.

The Price document number, correct address and patron code must be shown on the bill of lading to insure accurate billing. Payments of freight charges on interline through rates within this price authority are as follows: Freight charges must be prepaid when BNSF is the originating carrier. Freight charges must be collect when BNSF is the terminating carrier.

Rates in this price list take precedence in the following order: 1st - Point to Point, 2nd - Point to Group, Group to Point, or Group to Group, and 3rd - Mileage Scale.

Transportation under this agreement is subject to BNSF Rules Book 6100-Series. A copy of this Rules Book may

be obtained via the internet at: www.BNSF.com. If Customer does not have access to the internet, Customer should contact Price Management at (817) 593-1134 and a copy of BNSF Rules Book 6100 will be mailed to Customer.

Price is subject to UFC 6000.

Rate Publication Insert: As a result of Transportation Security Administration (TSA) rail security regulations on Rail Security Sensitive Materials (RSSM), this price authority will not apply when shipments are routed via Interchange Junctions covered by Note 125 or to or from Stations covered by Note 126 of the Official Railroad Station List (OPSL 6000 series). RSSM are defined by the TSA in the Code of Federal Regulations at 49 C.F.R. 1580. RSSM are designated by the TSA and include TIH/PIH commodities and more than 5,000 lbs of either division 1.1, 1.2, or 1.3 Explosive materials or Class 7 radioactive materials.

Customers interested in shipping RSSM via the Interchange Junctions and/or Stations covered by Notes 125 and 126 of the Official Railroad Station List (OPSL 6000 series) should contact their BNSF Marketing representative.

Switching charges at Origin and Destination will be absorbed up to \$300.00. No more than \$300.00 per car will be absorbed. Any additional amount will be assessed.

For per car rates displayed in this Price Authority: For shipments moving on per car based rates in this Price Authority, BNSF will not be required to weigh shipments. Requests for weighing a car will be subject to the rules, regulations and charges found in BNSF Weighing Book BNSF-9300-Series. For weight based rates displayed in this Price Authority: For shipments moving on weight based rates in this Price Authority, shipper must have a Weight Agreement and will be responsible for supplying BNSF origin weights at the time of billing. If you are unsure if you have a Weight Agreement with BNSF, please contact auxpricing@bnsf.com. A weighing charge will apply whenever BNSF is requested to weigh a car. Except as otherwise provided herein, the rules, regulations and charges of BNSF Weighing Book, BNSF-9300 Series will apply, except item 500, paragraph C., 1, will not apply.

Price may be used in combination with other prices for the portion of the shipment subsequent to specified destination, EXCEPT price must not be used in combination with other prices for the portion of the shipment subsequent to specified destination when movement is by rail via UP. If used in combination, separate freight bills will be issued for each price used according to the provisions of Railway Accounting Rule 11.

~ COMMODITIES:

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